

**IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF OKLAHOMA**

<b>KARL FONTENOT,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. CIV-16-69-JHP</b>
	)	
<b>JOE ALLBAUGH, Director,<sup>1</sup></b>	)	
	)	
<b>Respondent.</b>	)	

**RESPONDENT’S EMERGENCY MOTION TO UNSEAL**

Comes now Respondent, by and through Mike Hunter, Attorney General of the State of Oklahoma, and pursuant to the Order of the Court of Appeals for the 10<sup>th</sup> Circuit, requiring Respondent to review documents previously placed under seal by this Court (Order, 19-7045, Oct. 15, 2019) (Attachment 1). In support of this Motion, Respondent states the following:

1. On September 13, 2019, Respondent filed a *Notice of Appeal* in the instant case (Doc. 153).
2. On October 11, 2019, Respondent filed a *Designation of Record on Appeal* in the Court of Appeals for the 10<sup>th</sup> Circuit (Designation of Record, 19-7045, Oct. 11, 2019). Certain items in the *Designation of Record on Appeal* are sealed in the record of this case.
3. On October 15, 2019, pursuant to an *Order* of the Court of Appeals for the 10<sup>th</sup> Circuit, Respondent is “directed to review the sealed documents in the record and determine which sealed documents are necessary [to designate for the record on appeal]” (Attachment 1, p. 1).

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<sup>1</sup> Scott Crow has replaced Joe Allbaugh as Interim Director of the Oklahoma Department of Corrections and should be substituted as the party Respondent pursuant to Fed. R. Civ. P. 25(d).

4. Pursuant to the Order of the Court of Appeals for the 10<sup>th</sup> Circuit, Respondent is also directed to re-file a *Designation of Record on Appeal* within seven (7) days of the Order, or by October 22, 2019, based upon such review (Attachment 1, pp. 1-2).
5. Pursuant to communications with Petitioner's counsel between October 15-16, 2019, Petitioner agrees that the following items may be unsealed by the Court: Docs. 35, 36, 37, 38, 39, 40, 41, 45, 47.
6. Petitioner's counsel does not agree to the unsealing of Docs. 25, 27-28, 30-33, 50-52, and 54; Petitioner's counsel avers these relate to Criminal Justice Act (CJA) (18 U.S.C. § 3006A(a)) expense material. While Respondent recognizes that some of the remaining sealed items may contain CJA material, there is no way to distinguish those items from the rest of those sealed items either based upon the docket sheet or by Notices of Electronic Filing (NEF). As Officers of the Court, Respondent's counsel are solely interested in carrying out the Court of Appeals' directive to review the sealed portions of the record to ensure that a "fully compliant designation of record . . . includ[ing] only the necessary sealed items" is filed in the pending appeal (Attachment 1). Respondent's counsel will overlook each document which is identifiable as CJA material, as soon as it is determined to be such under the Court mandated review and irrelevant to designating the record on appeal.
7. Respondent's counsel must "review," pursuant to the Order of the Tenth Circuit Court of Appeals, the sealed documents that may be relevant to the pending appeal, to "determine which sealed documents are necessary," before they can re-file anew a "fully compliant" designation of record within "7 days" of the Order (Attachment 1, pp. 1-2) ("Appellant is directed to review the sealed documents in the record and determine which sealed

documents are necessary.”). Respondent’s counsel, therefore, due to the very short amount of time, requests timely electronic access to the entirety of the Court’s docket.

Wherefore, for good cause shown, and pursuant to the Order of the Tenth Circuit Court of Appeals of October 15, 2019, Respondent respectfully seeks an Order of this Court to unseal all documents previously placed under seal, and allow Respondent’s counsel access to sealed documents for review purposes, so that Respondent may re-file his Designation of Record by October 22, 2019.

Respectfully submitted,

**MIKE HUNTER**  
**ATTORNEY GENERAL OF OKLAHOMA**

**s/ MATTHEW D. HAIRE**  
**MATTHEW D. HAIRE, OBA #14916**  
**ASSISTANT ATTORNEY GENERAL**

313 NE 21<sup>st</sup> Street  
Oklahoma City, OK 73105  
(405) 521-3921  
(405) 522-4534 Fax  
Service email: fhc.docket@oag.ok.gov

**s/ THEODORE M. PEEPER**  
**THEODORE M. PEEPER, O.B.A. #19909**  
**ASSISTANT ATTORNEY GENERAL**

313 N.E. 21st Street  
Oklahoma City, OK 73105  
(405) 521-3921  
(405) 522-4534 (Fax)  
Service email: fhc.docket@oag.ok.gov

**ATTORNEYS FOR RESPONDENT**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of October, 2019, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Robert Ridenour, OBA # 16038  
Assistant Federal Defender  
One West Third Street, Ste. 1225  
Tulsa, OK 74103

Tiffany R. Murphy, Arkansas Bar # 2015057  
790 N. Cliffside Drive  
Fayetteville, AR 72701

**s/ MATTHEW D. HAIRE**